92-1374

No.

Supreme Court, U.S.
FILED
FEB 12 1993
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1992

MARK W. MILLER,

Petitioner,

vs.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Respondent.

Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania and the Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

SANFORD S. FINDER
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Lutz Appellate Services, inc.
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QUESTIONS PRESENTED

This case presents basically a single question: whether the Redevelopment Authority of the County of Washington acting in concert with the industrial development agency, an agency which it controls, in condemning a small area within a much larger blighted area for the sole purpose of acquiring this land for the benefit of a private corporation constituted an unconstitutional and unlawful taking in that it was a condemnation of public property for private use. The Petitioner asserts that because of the small nature of the taking and the fact that the parcel in question was only usable by the private corporation, this constituted a taking of private property for private use.

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No.

In The

Supreme Court of the United States

October Term, 1992

MARK W. MILLER,

Petitioner,

vs.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Respondent.

Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania and the Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

The Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment and opinions of the Commonwealth Court of Pennsylvania for which a Petition for Allocatur was filed to the Supreme Court of of Pennsylvania which Petition was denied on November 20, 1992.

OPINION BELOW

The opinion of the Commonwealth Court and the order of the Supreme Court are set forth as Appendix A hereto and are unreported as far as known. The opinion and order of the Court of Common Pleas of Washington County, Pennsylvania, are set forth as Appendix B hereto and is also unreported as far as known.

STATEMENT OF JURISDICTION

This Petition for Certiorari was filed within ninety (90) days of the order of the Supreme Court of Pennsylvania. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

Amendment V, Constitution of the United States of America provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or an indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when an actual service in the time of War or public danger; no shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

This case arose as a result of a Declaration of Taking filed by the Respondent, Redevelopment Authority of the County of Washington which, in essence, condemned and took a series of lots owned by the Petitioner. The matter proceeded by the Respondent filing, under Pennsylvania Procedure, Preliminary Objections, which raised the issue as to whether or not the taking in this case was for a private rather than a public purpose. The central issue in the case is where a private corporation seeks to acquire the property of another, and the property in question is peculiar in its location and availability and size to be only of use to the private corporation, does such a taking, whether under the guise of the Urban Redevelopment Law or not, constitute a taking for private use or purposes. The evidence reveals that the entire process started by reason of the private corporation, CIBA-GEIGY, sometimes referred to as Drakenfeld, contacting the Industrial Development Agency of Washington County, Pennsylvania. The Industrial Development Agency is operated by the Redevelopment Authority of Washington County, Pennsylvania, and is under its direction and control. The correspondence and deposition evidence indicates that the sole purpose for the contact was to indicate that CIBA-GEIGY, the private corporation, desired to expand its operation by acquiring property that adjoined it of which the Petitioner's property was part and parcel. This property consisted of approximately 15 lots having a uniform width of Thirty (30) feet and a uniform depth of One-hundred Fifty (150) feet.

After the initial meeting, meetings were then conducted between the private corporation, as well as correspondence, and the Redevelopment Authority of the County of Washington, seeking to get the authority to utilize the provisions of the Urban Redevelopment Law to condemn the properties which adjoined the land of the private corporation and then resell it to the private

corporation. The correspondence reveals that without hesitation the entire project commenced by reason solely in the interest of the private corporation acquiring this peculiar tract of land. It also was developed that this was a small tract within a larger area of blight for which there were no plans nor efforts to condemn. It was, in essence, a small area of blight in a sea of blight. The record further reveals that no activity commenced until after the correspondence was under way for a period of May of 1988 until the filing of the certification in September of 1989, other than the acquisition of funds and the exchange of a series of correspondence.

The correspondence, which is all exhibits, were between CIBA-GEIGY and the Redevelopment Authority. The testimony reveals that it concerned CIBA-GEIGY's desire to acquire this property for its expansion and its concern that the Authority would acquire it for them so that they could expand the plant. The deposition of Robert Umstead, which was incorporated in the record, clearly indicates that CIBA-GEIGY had been interested in this property since the 1980's and that it was solely of interest to CIBA-GEIGY and was the logical place to expand. It was also indicated that it was very unlikely that anyone else would have an interest in a tract of this size for commercial redevelopment other than CIBA-GEIGY who adjoined it.

The area consisted of ten (10) residential structures and the Petitioner's business establishment in which he stored his equipment and materials he had obtained in his demolition work. The Redevelopment proposal indicates that of the thirteen (13) structures, four (4) were dilapidated warranting clearance, four (4) were major deficient and the other five (5) where either minor deficient or sound. The lower court's opinion of the Honorable David L. Gilmore filed on July 2, 1990, indicates clearly in his Finding of Fact number five (5) that Drakenfeld (CIBA-GEIGY) was interested in the acquisition of this property to facilitate an expansion of their plant and so advised the Redevelopment

Authority during 1988 and 1989. The Redevelopment Authority was conscious of and actively pursued the potential for Drakenfeld (CIBA-GEIGY) to acquire the redevelopment area after the removal of the blight prior to the commencement of the project.

The taking of private property for public use has been called a Public Use Limitation in the Fifth Amendment and a proceeding that would take private property for a private purpose would be unconstitutional. However, it is also recognized that the mere fact that the property is taken to be transferred to private beneficiary does not condemn the taking as having only a private purpose. It is only the taking's purpose, and not the mechanics that must pass scrutiny under the Public Use clause of the Fifth Amendment; *Hawaii Housing Authority v. Midkiff*, 67 U.S. 229, 81 L. Ed. 2d 186, 104 S. Ct. 2321 (1984).

It is your Petitioner's position in this case that it isn't the mechanics that your Petitioner has looked at but rather the true purpose of the taking.

The unusual aspect of this property as being valuable solely to the private corporation coupled with the private corporation's conduct in actually triggering the entire project to take a tract 450 feet by 150 feet as the evidence clearly indicates; the pre-governmental activity correspondence indicating the needs of the private party for this tract and the price that was to be paid for the land before any governmental action was taken. The evidence clearly indicates that "blight" was only a curtain behind which the governmental authority hid to acquire this property solely for the private corporation. That was clearly under the evidence; the sole purpose of the entire proceedings.

This fact is even more clearly demonstrated by the very nature of the tract. It is contiguous to and virtually surrounded by the lands owned by the private corporation. It was the only area in

which the private corporation could expand. The private corporation already owned land adjacent to it which was exempted from the condemnation proceedings. It is a parcel of ground so small and of no use to any other party. All these factors indicate that the sole purpose was to acquire this tract for this corporation. The removal of the blight was only secondary and only aided in the ability to take the property from unwilling sellers and transfer it to the private person and was a means rather than a purpose.

This case and Petition present, for the first time, a clear case in which a public agency has hidden behind the purposes of the statute in order to specifically acquire a small parcel of ground for one (1) prospective buyer when, it is admitted, that there is no other prospective purchaser who would use a tract of this size.

Both the Court of Common Pleas (the lower court), and the Commonwealth Court rested their judgment solely upon the fact that the area was blighted and that the contention of the courts below were that the acquisition for the private beneficiary was incidental, which in your Petitioner's opinion, completely overlooked the facts.

The issues raised herein were raised in the first instance by the Preliminary Objections and kept alive through the entire appellate process. There is attached a copy of the Preliminary Objections as Appendix C to show that the initial stage in which the question was raised.

REASONS FOR GRANTING THE WRIT

Both the lower court's opinion and the Commonwealth Court opinion in this case from which appeals to the Supreme Court of Pennsylvania were denied, rely upon the same principle in essence that the area was blighted and, therefore, was a proper area in which redevelopment could occur and there was no violation of

your Petitioner's rights. Neither opinion clearly talks about, or addresses, the issue raised here, other than to say that they were inapplicable.

This is a case of almost first impression from reported cases since no case was discovered in which the facts were as peculiar. It is believed that Redevelopment Authorities, under these kind of facts, could engage in taking very small tracts of land for the sole purpose of benefiting a prospective private purchaser who wishes to expand but cannot purchase from the owner (which was the case here) and under the guise of public use take private property. The limits of the exercise of the power under the Redevelopment Authority Acts within constitutional limitations has not been decided. This is the first case in which an area marginally blighted in which other businesses, such as your Petitioner, are being dislocated in order to acquire the property for a specific private buyer, has ever been addressed in this factual context. It raises the serious constitutional question whether or not the purposes of the act are being utilized for a private purpose and private use from its inception rather than a public use. It is contended that the courts, below in this case did not focus on the character of the action and on the nature of the interference as indicated in *Keystone Bituminous Coal Association v. DeBenedictis*, 107 S. Ct. 1232 (1987), 94 L. Ed. 2d 472, or as pointed out in *Hawaii Authority v. Midkiff, supra.* Was the action here intended to advance a public purpose or was the use of the so-called public purpose truly a guise or disguise to acquire the property in question solely for the benefit of a private person?

Your Petitioner has sought not to focus on the issue of the mechanics but the true, factual situation and the peculiar nature of this case as shown by the drawings where it is a small parcel of use only to one party, a private one, who initiates and activates and causes public action to institute with only one aim and that is its acquisition of this small, infinitesimal tract in a sea of blight for one person solely.

While the size itself of the tract is only indicative, it is contended that unless some restriction be put upon the exercise of these rights we could become embroiled in single parcels as was indicated in the one deposition demonstrating another instance where the Authority had a single lot declared blighted. It is contended in this case that the taking herein disguises the true intent of the project and is the most abject use of public funds to benefit a private corporation that one could imagine. It is not the taking of a large area and redeveloping it with new interests and new ownerships, new ventures or new structures but rather the acquisition for a sole and primary purpose, the benefit of the one private corporation interested in acquiring it.

CONCLUSION

The peculiar factual situation in this case it is contended that a protected liberty under the Fifth Amendment has been deprived and this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted:

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Attorneys for Petitioner
66 West Wheeling Street
Washington, Pennsylvania 15301
(412) 225-1630

APPENDIX A — ORDERS OF THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT DATED NOVEMBER 20, 1992

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

November 20, 1992

Sanford S. Finder, Esquire
FINDER, ALLISON & GRAHAM
66 West Wheeling Street
Washington, PA 15301

In Re: Mark W. Miller v. Redevelopment Authority of the County of Washington
No. 0229 W.D. Allocatur Docket 1992

Dear Mr. Finder:

The Court has entered the following Order on your Petition for Allowance of Appeal in the above-captioned matter:

"November 20, 1992
Petition Denied
Per Curiam"

Very truly yours,
s/ Irma T. Gardner
DEPUTY PROTHONOTARY

ITG/dal
cc: Frank A. Conte, Esq.
Samuel S. Pangburn, Esq.
Honorable David L. Gilmore

Appendix A

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

November 20, 1992

Sanford S. Finder, Esquire
FINDER, ALLISON & GRAHAM
66 West Wheeling Street
Washington, PA 15301

In Re: Fred Fleet, II, and Delcina Fleet, his wife, as joint tenants with right of survivorship and not as tenants in common and Mark W. Miller v. Redevelopment Authority of the County of Washington
No. 0228 W. D. Allocatur Docket 1992

Dear Mr. Finder:

The Court has entered the following Order on your Petition for Allowance of Appeal in the above-captioned matter:

"November 20, 1992
Petition Denied
Per Curiam"

Very truly yours,
s/ Irma T. Gardner
DEPUTY PROTHONOTARY

ITG/dal
cc: Frank A. Conte, Esq.
Samuel S. Pangburn, Esq.
Honorable David L. Gilmore

APPENDIX B — OPINION AND ORDER IN THE COMMONWEALTH COURT OF PENNSYLVANIA FILED APRIL 9, 1992

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1544 C.D. 1991

Argued: February 6, 1992

FRED FLEET, II and DELCINA FLEET, his wife, as joint tenants with right of survivorship and not as tenants in common and MARK W. MILLER,

Appellants

v.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Appellee

No. 1545 C.D. 1991

MARK W. MILLER,

Appellant

v.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Appellee

BEFORE: HONORABLE JOSEPH T. DOYLE, Judge
HONORABLE JAMES R. KELLEY, Judge
HONORABLE FRANCIS A. BARRY, Senior Judge

Appendix B

OPINION BY JUDGE DOYLE FILED: April 9, 1992

Fred Fleet and Mark W. Miller (collectively referred to as Landowners) appeal an order[1] of the Court of Common Pleas of Washington County which denied preliminary objections to declarations of taking filed by the Redevelopment Authority of Washington County (Authority).

On September 7,1989, the Washington County Planning Commission determined that a section of Weirich Avenue in Canton Township, Washington County, was blighted and approved a proposal of the Authority to redevelop that area. This plan, known as the Weirich Avenue Redevelopment Area, contained sixteen parcels of land, thirteen of which contained structures. The Authority authorized the condemnation and declarations of taking were filed with regard to these parcels, including those of the Landowners.

The Landowners filed preliminary objections to the declarations of taking asserting that the Authority had exercised its power of eminent domain for the sole purpose of aiding a private corporation, the Drakenfeld Corporation, to expand its facilities adjacent to the Weirich Avenue Redevelopment Area. After a hearing on the preliminary objections, the trial court found as fact that Drakenfeld had indeed been interested in the acquisition of this property for the expansion of its facility and had so advised the Authority during 1988 and 1989. Further, the trial court found that, prior to the commencement of the redevelopment, the Authority actively pursued the potential for Drakenfeld to acquire the Weirich Avenue project, and there was considerable

---

1 The Landowners, Fleet and Miller, each filed a separate appeal from the trial court's order. These appeals have been consolidated for disposition by this Court.

correspondence between Drakenfeld and the Authority before the properties were condemned. The trial court also made the critical finding that Weirich Avenue Redevelopment area met the criterion for designation as a blighted area.[2]

The trial court, however, concluded that the Authority condemned the land for a public purpose and opined:

> [W]hile certainly the redevelopment authority believed Drakenfeld would be a viable prospect for the purchase of the land, and even assumed that they would eventually purchase the land, this does not, in and of itself, render the taking private. The area certified as blighted met the requirements of the law, the appropriate procedures were followed in certifying the area despite the fact that all involved assumed that Drakenfeld would logically purchase the redeveloped area, there is no formal agreement to do so, nor is there any indication that some undue influence or bad faith was exercised in insuring that that will occur.

Accordingly, the trial court denied the Landowners' preliminary objections and this appeal followed. On appeal the Landowners contend that there land was improperly condemned by the Authority and was condemned solely for the purpose of benefiting the Drakenfeld Corporation, a private and not a public purpose.

---

2 The Landowners conceded during a hearing below that the Weirich Avenue area could pass the test as a blighted neighborhood under Section 2(a) of the Urban Redevelopment Law (Law), Act of May 24, 1945, P.L. 991, *as amended*, 35 P.S. § 1702(a).

Appendix B

Our analysis must begin with recognizing that public officials are presumed to act lawfully and in good faith. *City of Philadelphia Appeal,* 40 Pa. Commonwealth Ct. 409, 398 A.2d 224 (1979). Where the right of eminent domain is vested in a municipality, administrative body, or even a private corporation, the question as to whether the circumstances justify the exercise of the power in a specific instance is not a judicial one, at least in the absence of fraud or palpable bad faith. *Schenck v. Pittsburgh,* 364 Pa. 31, 70 A.2d 612 (1950). Because of the nature of the Landowners' contention, that the Authority decided to condemn their land solely for the benefit of Drakenfeld, the question at the core of this appeal is whether the Authority exercised its eminent domain power in "palpable bad faith."

In *Redevelopment Authority of the City of Erie v. Owners,* 1 Pa. Commonwealth Ct. 378, 274 A.2d 244 (1971), we defined the term "palpable bad faith" as follows:

> These words [palpable bad faith] have vital meaning when used as a limitation on the power of a governmental authority to condemn property. Bad faith is generally the opposite of good faith and . . . implies a tainted motive of interest. Bad faith becomes palpable when such motive is obvious or readily perceived. The courts have the responsibility to see that an authority has not acted in bad faith, and that property be taken by eminent domain only to the extent reasonably required for the purpose for which the power is exercised.

Id. at 383, 274 A.2d at 247. A party alleging that an authority has acted in "palpable bad faith" must prove it by clear, precise, and indubitable evidence. *City of Philadelphia Appeal.*

Appendix B

In *Erie*, the Redevelopment Authority of Erie improperly condemned a tract of land for the exclusive purpose of selling it to an individual, Achilles Pulakos. Palakos owned a candy store which was condemned by the Redevelopment Authority in order to construct a hotel. Pulakos fought the taking of his property which resulted ultimately in a deal being made surreptitiously with the Authority to sell him another parcel of property owned by the appellants, for the purpose of relocating his candy store. The appellant's property was also condemned as part of the hotel project. This entire arrangement was agreed upon prior to the Authority filing its declaration of taking.

The record in *Erie* clearly revealed that the property in questions was taken for the benefit of Pulakos; the Court stated:

> The Authority *conceded* that appellants' property, after demolition of the building, would be conveyed to the Pulakos['] interests who would erect a one-story candy store occupying the entire lot. . . . The Authority's own records show that . . . action was taken to amend the Urban Renewal Plan . . . to "sincerely solicit" an *exclusive* proposal from Pulakos for *the sole purpose of obtaining the property in question for the benefit of Pulakos.*

Id. at 389, 274 A.2d at 250 (emphasis added). Therefore, we concluded that the Redevelopment Authority of Erie acted in palpable bad faith when it acquired a parcel of property for the sole purpose of relocating Pulakos' private retail store.

The Landowners argue that the facts here are similar to the facts in Erie. They assert that the Authority had an arrangement

with the Drakenfeld Corporation, prior to filing declarations of taking, to sell to Drakenfeld the Weirich Avenue properties.

In the present case, in contrast to *Erie*, there is no evidence that would qualify as a "smoking gun" demonstrating that the Authority acquired the Landowners property solely for the use of the Drakenfeld Corporation. The evidence here, in the form of depositions and correspondence between the Authority and Drakenfeld, shows, at most, that Drakenfeld was interested in the Landowners' properties and communicated that interest to the Authority, and that the Authority wanted Drakenfeld to purchase the Weirich Avenue property.[3] The evidence does not demonstrate that the properties were declared blighted for the sole reason of making the land available for Drakenfeld, or that the Authority had an agreement to sell the land to Drakenfeld prior to condemning the Landowners' properties. While Drakenfeld did benefit from the Authority's decision to redevelop Weirich Avenue, the exercise of the right to eminent domain does not lose its public character because there may exist in the process some measure of private gain. *Belovsky v. Redevelopment Authority of Philadelphia*, 357 Pa. 329, 54 A.2d 277 (1947). Private interests are encouraged and expected to take over the development of the condemned blighted area. That is the whole purpose of the redevelopment plan. The record in this case does not reveal an obvious or readily perceived tainted motive behind the Authority's exercise of its eminent domain power. We therefore conclude that there is no palpable bad faith in the Authority's decision to condemn the Landowners' property.

Accordingly, the order of the trial court is affirmed.

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3 This correspondence appears to be relevant to the type of information pertinent to a business seeking to take advantage of development opportunities under the Business Infrastructure Development Act, Act of July 2, 1984, P.L. 520, *as amended*, 73 P.S.§§ 393.1 - 393.12

Appendix B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1545 C.D. 1991

MARK W. MILLER,

Appellant

v.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Appellee

ORDER

NOW, April 9, 1992, , the order of the Court of Common Pleas of Washington County in the above-captioned matter is hereby affirmed.

s/ Joseph T. Doyle
JOSEPH T. DOYLE, JUDGE

APPENDIX C — PRELIMINARY OBJECTIONS

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. 90-4694

FRED FLEET, II and DELCINA FLEET, as joint tenants with right of survivorship and not as tenants in common,

Address: 34 Oakland Avenue
Washington, PA 15301

and

MARK W. MILLER,

Address: 989 Arch Street
Washington, PA 15301

PLAINTIFFS,

vs.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Address: 603 Courthouse Square
100 West Beau Street
Washington, PA 15301

DEFENDANT.

TYPE OF PLEADING:

PRELIMINARY OBJECTIONS TO THE OBJECTIONS TO THE DECLARATION TAKING

Filed on Behalf of Plaintiff

Appendix C

Counsel of Record for this Party:

Sanford S. Finder, Esquire PA I. D. No. 05450

FINDER, ALLISON & GRAHAM
66 West Wheeling Street
Washington, Pennsylvania 15301

Appendix C

IN THE COURT OF COMMON PLEAS OF WASHINGTON, COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. 90-4694

FRED FLEET, II and DELCINA FLEET, as joint tenants with right of survivorship and not as tenants in common, and MARK W. MILLER,

Plaintiffs,

vs.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Defendant.

PRELIMINARY OBJECTIONS TO THE DECLARATION OF TAKING

AND NOW, TO WIT, this *15th* day of October, 1990, comes MARK W. MILLER and FRED FLEET, II and DELCINA FLEET, Plaintiffs above-named and files this Preliminary Objection to the Declaration of Taking and Avers as follows:

1. The purpose of the Condemnation as stated in Paragraph 4 is not correct. It is the Plaintiff's understanding that the purpose of the condemnation is to acquire not only this Plaintiff' properties, but other properties of other owners for the sole purpose of benefitting the Ciba-Geigy Corporation expansion of their present facility, which borders upon this property on Weirich Avenue.

Appendix C

2. The nature of the project is to use public funds for the sole and exclusive purpose of aiding a private corporation in expanding its operations and its requiring property owners to sell properties through the purported exercise of the right of eminent domain, which they are not interested in.

3. This is demonstrated by the fact that the Defendant has been engaged in a series of activities, including paying rather exorbitant prices for residential properties in this area already zoned heavily industrial.

4. That it is unlawful, under any circumstances, to utilize public funds for a sole and specific purpose of aiding one corporation in its one private purpose. There is not Urban redevelopment necessary approved in this area generally, nor is this a commercial or industrial project as such has been defined, but rather a specific acquisition to benefit a private corporation.

WHEREFORE, showing as above, your Honorable Court is requested to declare the Declaration of Taking invalid.

FINDER, ALLISON & GRAHAM

By: Sanford S. Finder, Esquire
Sanford S. Finder, Esquire

Date: October *15*, 1990

Appendix C

PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within *PRELIMINARY OBJECTIONS TO THE DECLARATION OF TAKING* was mailed via United States First Class Mail, postage prepaid on *October 16*, 1990, to all Counsel of Record at their respective addresses as follows:

Frank A. Conte, Esquire
729 Washington Trust Building
Washington, Pennsylvania 15301

Dated: *October 15*, 1990

By: Sanford S. Finder
Sanford S. Finder, Esquire

APPENDIX D — FINDINGS OF FACT FILED JULY 5, 1991

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA CIVIL DIVISION

No. 90-4074

MARK W. MILLER,

Plaintiff,

vs.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Defendant,

No. 90-4694

FRED FLEET, II and DELCINA FLEET, his wife as joint tenants with right of survivorship and not as tenants in common and MARK W. MILLER,

Plaintiffs,

vs.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Defendant,

APPEARANCES: Sanford S. Finder, Esquire
representing the Plaintiffs,
Frank A. Conte, Esquire
representing the Defendant,

Appendix D

FINDINGS AND ORDER

Gilmore, J.

July 2, 1991

This matter is before the Court on Preliminary Objections to a Declaration of Taking. The Plaintiffs assert that the Redevelopment Authority is taking their property for a private use and not a public purpose. After hearing, the Court makes the following:

FINDINGS OF FACT

1. The Washington County Redevelopment Authority pursuant to the Urban Redevelopment Law, 35 P.S. § 1601 et seq. approved by resolution September 7, 1989, the acquisition of 16 parcels of ground situate along Weirich Avenue in Canton Township, Washington County, Pennsylvania. This project was thereafter approved by Canton Township and by Washington County.

2. The purpose of the acquisition was to remove a blighted area which could provide for industrial expansion of the Drakenfield Corporation which owns an industrial site directly adjacent to the condemned area.

3. The area in question meets the criteria for designation as a blighted area within the Urban Redevelopment Law.

4. Prior to the adoption of the project and the acquisition of

any properties there was substantial correspondence between the Redevelopment authority and Drankenfield.

5.Drakenfield was interested in the acquisition of this property to facilitate an expansion of their plant and so advised the Redevelopment Authority during 1988 and 1989. The Redevelopment Authority was conscious of and actively pursued the potential for Drakenfield to acquire the redeveloped area after the removal of the blight prior to the commencement of the project.

DISCUSSION

Against this factual background the Plaintiffs seek to establish that the taking by the Redevelopment Authority is for a private and not a public purpose. The redevelopment Authority's position is that the project meets all of the requirements of the law, that an announced public purpose is being served and, therefore, the fact that there is incidential private gain does not defeat the use of condemnation.

The leading case is *Belovsky v. Redevelopment Authority of the City of Philadelphia,* 357 Pa. 329, 54 A2d 277 (1947). The Court stated:

> "Indeed, so far from it being legally objectionable that property acquired by eminent domain be resold or retransferred to private individuals after the purpose of the taking is accomplished, the law actually requires that property be taken by eminent domain only to the extent reasonably required for the purpose for which the power is exercised (Bachner vs. Pittsburgh, 339 Pa. 535,

> 539, 15 A2d. 363, 365) and upon cessation of the public use the public ownership is properly discontinued. Nor does the taking lose its public character merely because there may exist in the operation some feature of private gain, for if the public good is enhanced, it is immaterial that a private interest also may be benefited."

More recently the Commonwealth Court noted in *Redevelopment Authority of the City of Erie v. Owners or Parties in Interest,* 1 Pa. Cmlth Ct. 378, 274 A2d. 244 (1971). Citing *Schenck v. Pittsburgh,* 364 Pa. 31, 70 A2d. 612 (1950). "In the absence of any indication that the Authority did not act in good faith or was wholly arbitrary in certifying the area designated by it as blighted, its certification to that effect is not subject to judicial review."

In the instant case, while certainly the Redevelopment Authority believed Drakenfield would be a viable prospect for the purchase of the land, and even assumed they would eventually purchase the land, this does not, in and of itself, render the taking private. The area certified as blighted met the requirements of the law, the appropriate procedures were followed in certifying the area and despite the fact that all involved assumed that Drakenfield would logically purchase the redeveloped area, there is no formal agreement to do so, nor is there any indication that some undue influence or bad faith was exercised in insuring that that will occur.

Appendix D

ORDER

AND NOW, this 2 day of July, 1991, the Preliminary Objections are denied. Further the Plaintiffs' Motion to file Preliminary Objections Nunc Pro Tunc is denied.

BY THE COURT:

s/ David L. Gilmore
David L. Gilmore, J.

OPPOSITION

BRIEF

FILED
MAR 12 1993
OFFICE OF THE CLERK

No. 92-1374

In The

Supreme Court of the United States

October Term, 1992

MARK W. MILLER,

Petitioner,

vs.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Respondent.

On Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania and the Supreme Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court of the United States should deny certiorari on jurisdictional grounds in a case involving the Public Purpose Clause of the Fifth Amendment of the United States Constitution, where at no point in the state courts was the constitutional provision specifically raised as a point in controversy by the Petitioner; or, if the issue was raised, was the state court given an opportunity to address and correct alleged violations?

2. Whether a Redevelopment Authority, statutorily clothed with the power of eminent domain, where just compensation is not at issue, may take blighted private real property as permitted by the state statute, having sought prior to condemnation to assure redevelopment of the land taken and its return to private ownership following removal of blight?

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I. Under 28 U.S.C. § 1257, the Supreme Court of the United States has discretion to review judgments or decrees rendered by the highest court of the state in which a decision could be had where, *inter alia*, the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States. 4

II. Should this Court decide that some federal issue was raised in the state courts, Respondent urges that the issue raised by Petitioneris not one of first instance or one which is grounded on "peculiar" facts. 7

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No. 92-1374

In The

Supreme Court of the United States

October Term, 1992

MARK W. MILLER,

Petitioner,

vs.

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON,

Respondent.

On Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania and the Supreme Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

Respondent submits this Brief in Opposition to the Petition for Writ of Certiorari to the Commonwealth Court of Pennsylvania and the Supreme Court of Pennsylvania.

COUNTERSTATEMENT OF THE CASE

On August 28, 1990, Respondent, having the power of eminent domain under the Pennsylvania Urban Redevelopment

Law[1], filed a declaration of taking as required by the Pennsylvania Eminent Domain Code,[2] taking Petitioner's land in Canton Township, Washington County, Pennsylvania. Preliminary Objections filed by the Petitioner (A. 10a) were answered by the Respondent. The Answer denied that the taking was for a private rather than a public purpose. These pleadings gave rise, under the Pennsylvania law, to an evidentiary hearing before the Court of Common Pleas of Washington County. Following the hearing, the Common Pleas Court entered Findings and Order denying the Preliminary Objections.

Petitioner appealed to the Commonwealth Court of Pennsylvania arguing that the lower court erred in failing to find that the taking was not for a public, but for a private purpose. That court affirmed the Order of the trial court.

Petitioner then filed a Petition for Allocatur to the Supreme Court of Pennsylvania, which was denied (A. la).

At no stage of the proceeding did Petitioner specifically raise an issue under the Constitution or laws of the United States. At all times the state courts were given as the issue, whether or not the Respondent had exercised its power of eminent domain for a private rather than a public purpose. Both the Urban Redevelopment Law and the Eminent Domain Code, *supra*, were presumed to be valid. The activity of the Respondent in using its power was the sole question raised, *i.e.* whether factually the power had been used to effect a private rather than a public purpose. In all state courts Petitioner cited state cases and

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1. Pennsylvania Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, *as amended*, 35 P.S. § 1702 *et seq.*

2. Pennsylvania Eminent Domain Code, 1964, Sp. Sess., June 22, P.L. 84, 26 P.S. § 1-101 *et seq.*

authorities which bore only on the factual issues of the activities of Respondent in using the statutory power of eminent domain. No federal citations were made.

The area of the project for removal of blight and redevelopment is a one-block area zoned industrial in Canton Township. The Redevelopment Proposal (Resp. A. 1a), entered as an exhibit below, shows clearly the basis for the taking.

The state courts found no bad faith or arbitrary and capricious action on the part of the Respondent (A. 1a, 3a, 15a).

Following refusal of allocatur in the Supreme Court of Pennsylvania, the Petitioner filed the within Petition for Writ of Certiorari seeking review of judgment "and opinion of the Commonwealth Court of Pennsylvania and the denial of the Petition for Allocatur by the Supreme Court of Pennsylvania."

SUMMARY OF ARGUMENT

1. The Petition for Writ of Certiorari does not reach the standard of review set forth in Rule 10 of the Supreme Court Rules. The Petitioner does not attack the state legislation as unconstitutional. This Court has held that the Public Use Clause of the Fifth Amendment does not proscribe the exercise of eminent domain power rationally related to conceivable public purpose. The Petitioner has throughout the case avoided an attack on the state legislation, but asserts for the first time in this Court that the manner of administering that Act by Respondent amounted to a violation of Petitioner's rights under the Fifth Amendment. This is not a question which the Court ordinarily decides, but one reserved for the state courts.

2. On the merits of the question of the validity of the procedures used and the manner of their use by the Respondent, the

Supreme Court has examined the question of the use of eminent domain for urban redevelopment and has concluded that it is constitutional. It has also ruled in controlling cases that it shall not review the size or boundaries of a particular area. These are matters resting in the sound discretion of the legislative body creating the power.

REASONS FOR DENYING THE WRIT

I.

UNDER 28 U.S.C. § 1257, THE SUPREME COURT OF THE UNITED STATES HAS DISCRETION TO REVIEW JUDGMENTS OR DECREES RENDERED BY THE HIGHEST COURT OF THE STATE IN WHICH A DECISION COULD BE HAD WHERE, *INTER ALIA*, THE VALIDITY OF A STATUTE OF ANY STATE IS DRAWN IN QUESTION ON THE GROUND OF ITS BEING REPUGNANT TO THE CONSTITUTION, TREATIES OR LAWS OF THE UNITED STATES, OR WHERE ANY TITLE, RIGHT, PRIVILEGE OR IMMUNITY IS SPECIFICALLY SET UP OR CLAIMED UNDER THE CONSTITUTION OR THE TREATIES OR STATUTES OF, OR ANY COMMISSION HELD OR AUTHORITY EXERCISED UNDER, THE UNITED STATES.

Rule 10 of the Rules of the Supreme Court of the United States provides for indication of the character of compelling reasons for review to be considered. Only subsection (c) should be applicable here:

> (c) When a state court or a United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a

federal question in a way that conflicts with applicable decisions of this Court.

This Court has not been given any indication as to which portions of 28 U.S.C. § 1257 or Rule 10 would control the decision of the Court in granting or withholding review.

The burden rests on the party seeking review to show the necessitous reasons for the Court to exercise its jurisdiction. *Memphis Natural Gas Co. v. Beeler,* 315 U.S. 649, 62 S. Ct. 857, 86 L. Ed. 2d 1090 (1942).

The Supreme Court has held that there must have been an opportunity for the federal questions to have been passed upon by the state court in the case presented for review. *Coleman v. Thompson,* __ U.S. __, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991); *Illinois v. Gates, Ill.*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983), *rehearing denied,* 463 U.S. 1237, 104 S. Ct. 33, 77 L. Ed. 2d 1453.

If the Petitioner relies on that portion of 28 U.S.C.A. § 1257 regarding review of the validity of a state statute, his Petition fails to contain a reference to which state statute is sought to be reviewed. Nor does the Petitioner state at what point in the proceedings in state court the validity of a statute was raised. Rule 14(h) of the Supreme Court Rules requires specific location of this matter in the record and makes this requirement a jurisdictional imperative. Rule 24(e) requires a statement of grounds for jurisdiction with statutory authority. Nowhere are these grounds or citation found.

The Court and Respondent are left to guess as to the basis for the claimed review.

An examination of the Opinion and Order in the

Commonwealth Court (A. 3a) and Findings and Order (A. 15a) in the court of first instance reveals no discussion of the validity of the enabling legislation, *i.e.* the Urban Redevelopment Law, *supra*, or any other statute. The Petitioner not only did not raise the question of the validity of that Act, but admitted that his property passed the criteria as blighted under Section 2, 35 P.S. 1702.

The only issue in the state court was whether the activities of the Respondent,[3] which has been designated as the industrial development agency under separate legislation[3] to promote industrial development in the county of its operation, had used its eminent domain power as provided for in the Urban Redevelopment Law in an arbitrary or capricious manner or in bad faith. In short, Petitioner posed a factual question, at the same time not only assuming the validity of the act, but admitting the status of his property as "blighted" under the enabling legislation. As stated in *Street v. State of New York*, 394 U.S. 576, 89 S. Ct. 1354, 22 L. Ed. 2d 572 (1968):

> On an appeal from a state criminal conviction, the United States Supreme Court does not have power to consider whether a particular part of a state statute violates the Federal Constitution, unless the constitutional question was presented to the state courts in such a manner that it was necessarily decided by the state's highest court when it affirmed the conviction.

For these reasons, Respondent requests this Court to deny certiorari.

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3. Industrial Development Assistance Law, 1956, May 31, P.L. (1955) 1911, § 1 *et seq.*, 73 P.S. 351 *et seq.*

II.

SHOULD THIS COURT DECIDE THAT SOME FEDERAL ISSUE WAS RAISED IN THE STATE COURTS, RESPONDENT URGES THAT THE ISSUE RAISED BY PETITIONER IS NOT ONE OF FIRST INSTANCE OR ONE WHICH IS GROUNDED ON "PECULIAR" FACTS.

The Respondent is charged under a comprehensive plan for Canton Township and other communities in Washington County with the public purpose of removing blight under the Urban Redevelopment Law, *supra*, and of promoting industrial development, under the Industrial Development Agency Law, *supra*.[4] It chose an area for its operations where both public

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4. This Act in § 2, 73 P.S. 352 provides:

> It is hereby determined and declared as a matter of legislative finding:
>
> (a) That the health, safety, morals and general welfare of the people of the Commonwealth are directly dependent upon the continual encouragement, development, growth and expansion of business, industry and commerce within the Commonwealth.
>
> (b) That unemployment, the spread of indigency, the heavy burden of public assistance and unemployment compensation can best be avoided by the promotion, attraction, stimulation, development and expansion of business, industry and commerce in the Commonwealth.
>
> Therefore, it is declared to be the policy of the Commonwealth of Pennsylvania to promote the health, safety, morals and general welfare of its inhabitants through its Department of Commerce by means of grants to be made to industrial development agencies which are

(Cont'd)

functions would merge into a community of effort. An industrial user (Drakenfeld) which had expressed interest in an area adjacent to its property was contacted as to whether it would, after removal of the blighted block, acquire, redevelop and expand its facility providing the community with jobs, tax ratables and other benefits attendant on industrial development. The County Planning Commission studied the area and found that the area met the criteria of blight and so certified the block to be taken (Resp. A. 9a).

Architectural and economic evaluation of the project area was undertaken. This study revealed blight admitted by the Petitioner. In order to attempt to obtain financing to assist in the industrial development, the industrial user was asked for a letter of intent in order to comply with the Business Infrastructure Development Act.[5] Such a letter is required by § 4 of the Act, 73 P.C.S.A. 393.4, which shall disclose the public benefit potential of the industrial project.

It is the correspondence relating to this letter of intent referred to in the footnote in the opinion in Commonwealth Court (A. 8a), which the Petitioner alleges as showing bad faith in carrying out the eminent domain power given by the Urban Redevelopment Law.

The Commonwealth Court of Pennsylvania reviewed that correspondence and made a finding, as did the court of first

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(Cont'd)

> or may be engaged in planning and promoting programs designed to stimulate the establishment of new or enlarged industrial, commercial and manufacturing enterprises within the counties served by such agencies. 1956, May 31, P.L. (1955) 1911, § 2.

5. Act of July 2, 1984, P.L. 520, *as amended*, 73 P.C.S.A. 393.1-393.12.

instance, that that evidence did not disclose bad motive in Respondent's carrying out its legislative mandate.

This Court has found that it should not act as a court of appeal from findings of the state court of ultimate appeal. *Pillington v. Pillington,* Ca. Mo. 389 Fed. 32, *cert. denied*, 392 U.S. 906, 20 L. Ed. 2d 1364, 88 S. Ct. 2057 (1968). This is precisely what the Petitioner asks.

Aside from the factual finding of the state courts, this case on the merits would present precisely the same question as *Berman v. Parker,* 345 U.S. 26, 75 S. Ct. 98, 992 L. Ed. 27 (1954) if the question had been properly raised below. The *Berman* Court was faced with the question of determining the constitutionality of an Act of Congress permitting the taking of land in the District of Columbia to remove blight. After tracing the history of the Act, the opinion of the Supreme Court answers the question purportedly here presented as follows:

> Once the object is within the authority of Congress, the right to realize it through exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. [citation omitted] Once the power is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress alone to determine, once the public purpose has been established. [citations omitted]

348 U.S. 33.

The *Berman v. Parker* opinion goes on to support other techniques of redevelopment: repurchase of land by property owners in the project area; area planning versus structure by structure planning; and the taking of full title by the condemning agency. It also specifically answers the area of concern of Petitioner as to the size of the project.

> It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular area. Once the question of public purpose has been decided, the amount and character of the land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch.

348 U.S. 35, 36.

This Court has also held that the state may enunciate policy through an administrative agency like the Respondent. *Pacific Tel. & Tel. Co. v. Public Utilities Commission of California,* 443 U.S. 1301, 100 S. Ct. 1, 61 L. Ed. 2d 880 (1979).

Berman v. Parker was followed and expanded in the more recent case of *Hawaii Housing Authority v. Midkiff,* 67 U.S. 229, 104 S. Ct. 2321, 81 L. Ed. 2d 186 (1984). Midkiff, citing with approval *Berman,* went on to conclude that a statute of Hawaii setting up a mechanism to defeat an oligarchy of land ownership in that state was constitutional, even where title to land was not ever taken by the governmental body administering the project. Petitioner's reliance on this case in his argument is misplaced. The Court recognized the validity of the public purpose of transferring title to land from the oligarchical landholder/lessors to lessees, provided just compensation were afforded the lessors.

Moreover, *Keystone Bituminous Coal Association v. DeBenedictis*, 400 U.S. 470, 107 S. Ct. 1232 (1987) does not assist Petitioner in his claim. The case stands for the proposition, on the question of public purpose, that the requirement in a Pennsylvania statute for coal operators to let remain in place fifty percent (50%) of coal beneath certain structures represented a significant and legitimate public purpose.

All of these cases illustrate the hesitance of the Supreme Court to interfere with clearly stated legislative public purpose in legislation, both where title is taken to private property by a governmental body or where valid regulation is made on the use of property by private landowners.

There appears to be no new federal question raised by Petitioner in this case.

CONCLUSION

Respondent requests this Court to deny the Petition for Writ of Certiorari based on jurisdictional and substantial grounds, and to affirm the Order of the Supreme Court of Pennsylvania denying Petition for Allocatur to that court.

Respectfully submitted,

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APPENDIX A — REDEVELOPMENT PROPOSAL

REDEVELOPMENT PROPOSAL

WEIRICH AVENUE REDEVELOPMENT AREA

TOWNSHIP OF CANTON, PENNSYLVANIA

SEPTEMBER, 1989

PREPARED BY:

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON

Appendix A

REDEVELOPMENT PROPOSAL
WEIRICH AVENUE REDEVELOPMENT AREA
TOWNSHIP OF CANTON, PENNSYLVANIA
September, 1989

REDEVELOPMENT AUTHORITY OF THE COUNTY OF WASHINGTON

Consisting Of:

A. Redevelopment Plan Proposal

Introduction

1. Acquisition
2. Building Conditions
3. Standards for New Development and Design
4. Statement of Duration of Controls
5. Redevelopers Agreement
6. Procedure for Amendment of Plan

Exhibits

R.P.P. No. 1 - Acquisition Map
R.P.P. No. 2 - Building Conditions Map
Exhibit "A" - Boundary Description

B. Redevelopment Area Plan

Introduction

1. Boundaries and Existing Land Use
2. Standards of Population Density, Land Coverage and Building Intensities
3. Preliminary Site Plan
4. Land Use Plan
5. Statement of Zoning Changes
6. Statement of Street and Traffic Regulation
7. Statement of Rehousing

Appendix A

8. Statement of Estimated Cost
9. Statement of Continuing Controls

Exhibits

R.A. No. 1 - Boundary and Existing Land Use Map
R.A. No. 2 - Preliminary Site Plan
R.A. No. 3 - Proposed Land Use Plan
Exhibit "A" - Boundary Description

REDEVELOPMENT PROPOSAL
WEIRICH AVENUE REDEVELOPMENT AREA

Introduction

The Redevelopment Authority of the County of Washington has prepared this Redevelopment Proposal for consideration and appropriate action by the governing bodies of Canton Township and Washington County. The Proposal is in accordance with the Redevelopment Area Plan approved by the Washington County Planning Commission which is incorporated as part of this Proposal.

The redevelopment activities are designed to acquire all of the parcels with the exception of the property used for industrial parking. The assembled site will be sold to the adjacent industry for industrial expansion. A Redeveloper's Agreement for resale and development of the assembled site is also included and made a part of this proposal.

1. Acquisition

A map (Acquisition Map R.P.P. No 1) has been attached to the Redevelopment Proposal which identifies the properties scheduled for acquisition. The following properties are within the project area.

	ADDRESS	TAX MAP PARCEL	DESCRIPTION
1.	250 Weirich Avenue	120-011-11-04-0005-00	2 Story Frame (Lots 395-396)
2.	242 Weirich Avenue	120-011-11-04-0006-00	2 Story aluminum (Lot 394)
3.	234 Weirich Avenue	120-011-11-04-0008-00 120-011-11-04-0009-00 120-011-11-04-0010-00	1 story metal bldg. and lots (Lots 391, 392,393)
4.	Vacant lot between 234 and 200 Weirich Avenue	120-011-11-04-0011-00	Lot (Lot 390)
5.	200 Weirich Avenue	120-011-11-04-0012-00	2 story frame with det. garage (Lot 388-389)
6.	Vacant lot between 200 and 174 Weirich Avenue	120-011-11-04-0013-00	Lot (Lots 386-387) Vacant
7.	Vacant lot between 200 and 174 Weirich Avenue	120-011-11-04-0014-00	Lot (Lot 385) Vacant

8.	174 Weirich Avenue	120-011-11-04-0015-00 120-011-11-04-0016-00	1 story frame and lot Lots (383-384)
9.	170 Weirich Avenue	120-011-11-04-0017-01	2 story frame (Lot 382)
10.	166 Weirich Avenue	120-011-11-04-0017-00	2 story frame (Lot 381)
11.	162 Weirich Avenue	120-011-11-04-0018-00	2 story frame (Lot 380)
12.	150 Weirich Avenue	120-011-11-04-0018-01	1 story frame (Lot 379)
13.	142 Weirich Avenue	120-011-11-04-0019-01	2 story frame garage with block foundation (Lots 377-378)
14.	134 Weirich Avenue	120-011-11-04-0019-00	2 story frame (Lot 376)
15.	132 Weirich Avenue	120-011-11-04-0019-02	1 story frame (Lot 375)
16.	Vacant lot adjacent to 132 Weirich Avenue	120-011-11-04-0020-00	Lots (Lots 373-374) Vacant

Parcels 120-011-11-04-0021-00 through 120-011-11-04-0028-00 owned by Drakenfe Colors Division of Ciba-Geigy Company, will not be acquired.

Appendix A

2. Building Conditions

A Building Conditions Map, R.P.P. No. 2, has been included in the Redevelopment Proposal which identifies the properties to be acquired. Buildings have been classified in accordance with the following:

Dilapidated Warranting Clearance
Deficient - Major
Deficient - Minor
Sound

Of the 13 structures:

4 are dilapidated warranting clearance
4 are major deficient
1 is minor deficient
4 are sound

3. Standards for New Development and Design

No new standards have been applied to the areas for new development. The Township's codes and ordinances in regard to zoning and building will be applicable. The proposed land use is shown on Map R.A. No. 3.

4. Statement of Duration of Controls

The provisions and requirements of the Redevelopment Proposal shall remain in effect for a period of twenty (20) years from the date of approval of this Redevelopment Proposal by the governing body. The termination of this plan shall in no way permit the project land or any part thereof to be restricted on the basis of race, creed, color, or national origin in the sale, lease, use of occupancy thereof.

5. Redeveloper's Agreement

A form of Redeveloper's Agreement is incorporated as part of this proposal and is attached as Exhibit "B".

Appendix A

6. Procedure for Amendment of Plan

The redevelopment Proposal may be amended by following the procedure prescribed by State Law.

Appendix A

[EXHIBIT A IS BEING OMITTED IN THIS PRINTING]

APPENDIX B — CERTIFICATION FOR REDEVELOPMENT

Weirich Avenue Area

CERTIFICATION FOR REDEVELOPMENT

REDEVELOPMENT AREA PLAN

Canton Township

County of Washington

September, 1989

Prepared for:

Washington County Planning Commission

Prepared by:

Redevelopment Authority of the County of Washington

Appendix B

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- Redevelopment Area Plan
  - Area Boundaries
  - Existing Land Use
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  - Standards for Population Densities, Land Coverage and Building Intensities
  - Proposed Zoning Changes (if any)
  - Proposed Street Layout Changes (if any)
  - Rehousing of Families to be Displaced
  - Cost for Implementation
  - Controls to Effectuate Plan

INTRODUCTION/BACKGROUND

Canton Township is located adjacent to the City of Washington and like the City has enjoyed the benefits of urbanization, particularly industrial development; however along with the advantages there are land use conflicts. This report is intended to present these conflicts and outline a plan to maintain a balanced community by removing negative blighting influences and provide for orderly growth and development.

Pennsylvania has provided laws to direct proper planning and/or

replanning of an area. The Weirich Avenue area has grown and developed over the years without controls and/or achieving planning principles. To reorganize the area the Pennsylvania Urban Redevelopment Law (35 P.S. 1701-1747) provides the legal powers permitting the removal of blighting influences and provide direction for use and development of the area.

An area may be certified as "blighted" if one or more of the following criteria is prevalent.

- unsafe, unsanitary, inadequate, or overcrowded conditions of dwellings;
- excessive land coverage;
- lack of proper light, air and open space;
- defective design and arrangement of buildings;
- faulty street or lot layout
- economically or socially undesirable land uses; and
- other effects of inadequate planning or building obsolescence.

The Planning Commission need not find that each and every one of the above conditions exist within the redevelopment area in order to render a determination of blight. The existence of any one such condition is generally sufficient to warrant certification. The Planning Commission also must approve a Redevelopment Area Plan which provides direction for the Redevelopment Authority in preparing corrective action in the form of a Redevelopment Proposal.

Appendix B

Furthermore, all of the area deficiencies outlined in the Redevelopment Area Plan need not be corrected in a single redevelopment project. Redevelopment actions may be carried out over a period of time as opportunities arise.

The Act further sets forth the required elements of a redevelopment Area Plan as follows:

- definition of the area's boundary;
- a map which depicts the existing use of land within the area
- a land use plan showing proposed uses following redevelopment;
- standards of population densities, land coverage and building intensities;
- a statement of the proposed changes, if any, to the municipality's zoning ordinance;
- a statement of any proposed changes in street layouts and proposed traffic regulation;
- a statement of the extent and effect of the rehousing of families which may be necessary from the redevelopment area, and the manner in which such rehousing may be accomplished;
- a statement of the cost of acquisition within the redevelopment area, and of all other costs necessary to prepare the area for redevelopment; and

- a statement of such continuing controls as may be deemed necessary to effectuate the purposes of the Act.

The County Planning Commission must certify that the area is "blighted" and approve the Redevelopment Area Plan. The Redevelopment Authority of the County of Washington will prepare a Redevelopment Proposal which will eliminate, to the extent possible, the "blighting influences" and carryout the general planning objectives. A public hearing must be held by the Township Board of Supervisors and County Commissioners prior to their respective approvals. The Redevelopment Authority is responsible for implementation of the Redevelopment Proposal.

DETERMINATION OF "BLIGHT AND CERTIFICATION OF REDEVELOPMENT AREA"

The area studied is generally bounded by Weirich Avenue (north), CSX Railroad (east), Drakenfeld Alley (900± l.f.) (south), and Hayes Avenue (west).

The area is adjacent to the Drakenfeld Colors Division of CIBA-GEIGY Co. on the south and residential units on the north. Property information was initially secured from the County Tax Assessor Office and checked in the field prior to arranging formal property inspections and obtaining occupancy information.

The individual inspection sheets are incorporated in this report and are attached for reference. Based on the inspection, four of the thirteen structures are dilapidated, warranting clearance; five have deficiencies, one of which is minor and four are sound.

In addition to the structural conditions, these additional observations were noted:

Appendix B

- building set-backs were below standard
- irregular side yards
- no consistency in pattern of development
- non-residential and residential uses
- outside storage and other unsightly obstructions
- no parking along Weirich Avenue

After proper notification of all property owners in the study area a professional team comprised of the Authority staff acquisition officer, relocation officer and the consultant (architect) conducted field inspections and interviews. On March 16 appointments were scheduled and inspections and interviews were completed by the team. Attached find a letter of introduction from the Authority and a map indicating parcels, structures, and addresses. This map also provides a summary of the field surveys as shown below:

Land Use

10	Residential structures
	9 occupied
	1 vacant
1	Residential accessory structure - garage
2	Light industrial/commercial type buildings

Appendix B

3	Unimproved lots
1	Industrial parking facility (7 parcels)

Structural Conditions

10	Residential
	3 sound
	1 minor deficient
	3 major deficient
	3 dilapidated
1	Residential Accessory
	1 dilapidated
2	Light Industrial/Commercial
	1 sound
	1 major deficient

Buildings in varying degree of rehab or decline

Area adjacent to heavy industrial use

Weirich Avenue heavily travelled major arterial

Appendix B

Industrial parking facility in eastern portion of study area

Floodplain along unnamed alley

Based on the above conditions, the Redevelopment Area contains the following 4 of the 7 blight criteria as provided for in the Urban Redevelopment Law.

Unsafe, unsanitary, inadequate or overcrowded conditions
Defective design and arrangement of buildings
Economically or socially undesirable land uses
Other effects of inadequate planning or building obsolescence

Appendix B

REDEVELOPMENT AREA PLAN

WEIRICH AVENUE REDEVELOPMENT AREA

CANTON TOWNSHIP

COUNTY OF WASHINGTON

The Redevelopment Area Plan has been prepared in accordance with the Pennsylvania Urban Redevelopment Law. The objective is to eliminate the identified conditions of blight and provide direction for the orderly reorganization of the area in accordance with sound planning objectives and the Township and County General Plan.

1. The Redevelopment Area

The Redevelopment Area is generally bounded by Weirich Avenue (north), CSX Railroad (east), Drakenfeld Alley (900± l.f.) (south), and Hayes Avenue (west). The area is 150 ± feet wide and 900 ± feet long and contains 135,000 ± square feet or more than three acres. A boundary map is attached.

2. Existing Land Use

The area contains thirteen structures of which eleven are residential and two non-residential. In addition a large tract to the east is used as an employee parking facility. The two non-residential structures are occupied by light industrial/ commercial uses. Some parcels are used for outside storage. Mixed uses dominate and the growth pattern is inconsistent with present general plan and zoning. See attached Existing Land Use map.

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3. Proposed Land Use

Adjacent to the Redevelopment Area is a major industrial use which has been expanding and requires more space for growth. A portion of the Redevelopment Area is owned by this industry and is used as an employee parking facility. The general plan proposes industrial type uses up to Weirich Avenue. The present uses and ownership should be adjusted through acquisition and redevelopment with the permitted reuse - industrial. See attached Proposed Land Use Maps and Preliminary Site Plan.

4. Standards for Development

The density and intensity of land use shall be consistent with Township Zoning and Building Requirements. No additional land use controls are proposed.

5. Changes in Zoning

The Township Zoning map clearly indicates "industrial" as the permitted use for redevelopment. No changes are proposed.

6. Changes in Street Layout

There is a public right of way, namely Drakenfeld Alley, which is to be vacated subject to easements.

7. Rehousing of Families to be Displaced

Information on each family was obtained and is summarized below:

Appendix B

Number of residential structures	10
Number of owner-occupied	7
Number of tenant-occupied	2
Number of individuals (Roomer)	1
Number of persons (total)	26
Number of families/households	9
Number of businesses	4

In analyzing the housing needs of those households/ individuals who might be displaced the following bedrooms per household are required:

One bedroom	1
Two bedroom	2
Three bedroom	7

In all but two situations the displaced households will seek sales-housing as property owners. There are a number of comparable structures within the jurisdiction of the County and more specifically in the Washington-Canton community. The two tenant occupied units can be housed in available rentals. Although income information was not provided several of the families appear to be eligible for assisted housing. Publicly assisted housing is available.

The Redevelopment Authority should work closely with

each family to minimize any inconvenience in relocation. Relocation payments should be made in conformance with State/Federal requirements.

In addition four businesses may require relocation assistance.

8. Estimated Cost of Redevelopment

The following costs are estimated to carry-out redevelopment activities:

Acquisition	$450,000
Relocation	200,000
Clearance	50,000
Disposition	5,000
Site Improvements	50,000
Contingency	70,000
Total Estimate	**$825,000**

9. Duration of Controls

The Redevelopment Area Plan shall remain in effect for a period of twenty (20) years from the date of approval.

This Redevelopment Area Plan has been reviewed and approved by the Planning Commission on the date certified by the Chairman.

BY THE WASHINGTON COUNTY
PLANNING COMMISSION

s/ David B. Miller
Chairman

Date September 7, 1989

Appendix B

[EXHIBIT A IS BEING OMITTED IN THIS PRINTING]